uncle and niece, parties in the third degree of relationship. Their marriage is not generally regarded as being incestuous and void on that ground. *Bowers* v. *Bowers,* 10 Rich. Eq. (S. C.) 551; *Weisberg* v. *Weisberg,* 98 N. Y. Supp. 260. In *Weisberg* v. *Weisberg* a marriage between an uncle and niece was declared valid, the parties having lived together fourteen years. There was at that time no statute against such a marriage in New York. It is now forbidden in practically every state in the Union. PECK, DOM. REL. 2. Although such a marriage is forbidden and declared void in some states, courts of many such states will uphold its validity, if it is valid where performed, as not being contrary to a settled state policy and affecting good morals. *Harrison* v. *Harrison,* supra; *Schofield* v. *Schofield,* 51 Pa. Super. Ct. 564. See comment on this case in 61 UNIV. OF PA. LAW REV. 490. Contra, *Hayes* v. *Rollins,* 68 N. H. 191. In the case of *United States* v. *Rodgers,* 109 Fed. 886, a wife who was the niece of her husband naturalized here was refused admission to this country, the court holding such a marriage to be shocking to the moral sense and contrary to the policy of Pennsylvania laws. The fact that the parties have gone outside of the jurisdiction to marry in order to evade the laws of the state of their domicile has been held to make no difference. *Schofield* v. *Schofield,* supra.

POWERS—EFFECT OF COVENANT TO APPOINT.—A decedent, having an equitable estate for life, had power to make such disposition of the estate "for the benefit of himself and his children, by a last will and testament, or by an appointment in the nature of a last will and testament, as he may desire." In 1905 he made a will in which he appointed $25,000.00 to the defendant in pursuance of a covenant that in consideration of $5,000.00 he would execute such appointment by an irrevocable will. Later he made a new will in which the power was executed in a manner inconsistent with the provisions of the contract. *Held* that the covenantee was not entitled to specific performance, and since the appointees received nothing that was the property of the donee, there was nothing in their hands that equity could charge with a trust. *Farmer's Loan & Trust Co.* v. *Mortimer,* (N. Y. 1916) 114 N. E. 389.

Equity will not enforce specific performance of a covenant which the donee of a testamentary power makes to the effect that he will appoint in favor of certain objects, if he later makes appointments valid otherwise but inconsistent therewith. *In Re Parkin,* [1892] 3 Ch. 510; *In Re Bradshaw,* [1902] 1 Ch. 342; *Wilks* v. *Burns,* 60 Md. 64. But if an appointment is made in accordance with a prior contract, the fact that the donee is benefited by preventing a liability for breach arising, does not make the appointment bad. *Coffin* v. *Cooper,* 2 Dr. & Sm. 367; *Palmer* v. *Locke,* 15 Ch. D. 294. The reason underlying the rule is that to grant specific performance would enlarge a testamentary power into a power which could be exercised by deed, which would defeat the intention of the donor. *Reid* v. *Boushall,* 107 N. C. 345. Where one had an inchoate power to appoint by deed upon reaching a certain age, a covenant to appoint, made prior to attaining the prescribed age, was enforced by equity as a defective execution in *Johnson* v. *Touchet,* 37 L. J. R.

(N. S.) 25. When, however, the power may only be exercised by will, the covenant to appoint cannot be said to be a defective execution, and will not be aided in equity. *Gaskins* v. *Finks,* 90 Va. 384, 19 S. E. 166. In *Learned* v. *Talmadge,* 26 Barb. 443, a conveyance was made by the donee of a power to one of the objects, and covenants were made that he would not make any disposition of the property by any will and that all of his interest was relinquished and extinguished. Nevertheless appointments subsequently made were held valid as against grantees of the covenantee. See also *Re Collard and Duckworth,* 16 Ont. Rep. 735. But the execution of a mortgage with full covenants of warranty by the donee was held to estop him from inconsistent dealings with the estate, and the appointees under the will had no further rights, in *Langley* v. *Conlan,* 212 Mass. 135, 98 N. E. 1064. Though an affirmative contract to appoint will not be specifically enforced, yet where the donee covenanted that he would not exercise his power so as to reduce the share which a particular beneficiary would receive on a default of appointment, it was held to be a release of the power to appoint, and the power thereafter could only be exercised subject to the fetter or limitation thus imposed by the negative covenant, and appointments made inconsistent therewith were set aside to such an extent as would satisfy the covenant. *Re Evered,* [1910] 2 Ch. 147. A release of a power can be made in England by virtue of statute, CONVEYANCING ACT, 1881, §52. A power in gross might be released, but the court refused to consent to the proposition that the donee could by virtue of a "gainful agreement" bind himself to refrain from the exercise of a power, *Thomson's Executor* v. *Norris,* 20 N. J. Eq. 489, 528. The court in the principal case did not decide whether the contract was enforceable against the estate of the decedent, or void in toto.

SALES—DAMAGES FOR BREACH OF WARRANTY OF SEEDS.—Defendant sold plaintiff melon seeds and expressly guaranteed them to be of a particular variety known as "Klekley Sweets." An examination of the seeds would not have disclosed whether they were of this brand or not. Plaintiff prepared soil and planted the seeds, which produced melons of a different and inferior variety; and plaintiff sued defendant for breach of warranty. *Held,* that the measure of recoverable damages was the value of a crop such as would ordinarily have been produced that year had the seeds been as warranted, less the value of the crop actually produced. *Ford* v. *Farmer's Exch.,* (Tenn. 1916) 189 S. W. 368.

Where seeds are warranted to be true to name and a crop of an inferior quality is produced, it has generally been held that the measure of damages should be the difference between the value of the crop raised and the value of the crop which would have been produced had the seeds been as guaranteed. This is the rule followed in the principal case and is supported by *Passenger v. Thorburn,* 35 Barb. (N. Y.) 17; *Schutt* v. *Baker,* 9 Hun. (N. Y.) 536; *Flick* v. *Wetherbee,* 20 Wis. 392. Where no crop is produced at all, or if it is worthless, some cases allow us damages the expense of preparing the soil (less the general benefit to the land therefrom), the price paid for the seed, and the loss sustained from having the land lie idle. *Phelps* v. *Elyria*